

The City of  
Provo, Utah



Joseph A. Jenkins  
Mayor

January 26, 1991

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JUN 27 1991  
WATER RIGHTS  
SALT LAKE

Mr. Robert Morgan, State Engineer  
Department of Natural Resources Building  
Division of Water Rights  
1636 West North Temple  
Salt Lake City, Utah 84116

Dear Mr. Morgan:

You recently came down to Utah County and were part of a presentation on the DISTRIBUTION OF WATER, UTAH LAKE. There was much discussion on storage rights in Utah Lake and the relationship of those storage rights to upstream rights, as well as discussion on assigning priorities. After reviewing your handout materials, as well as the other information that was presented, I would like to respond by posing certain objections. It could be that I do not fully understand what you are proposing and how it is orchestrated to impact the water rights of Provo City.

As Mr. Merril Bingham has indicated to you, we want to be part of the solution and not part of the problem. However, we do not intend to allow Provo City water rights to be compromised. It may be that further discussions would clear up some of the objections. However, without more information, and based on our present understanding, I would like to formally file the following objections in response to your presentation:

1. Object to the protection of primary or system storage rights in Utah Lake to the extent that creation or maintenance of those rights interferes with decreed rights held by Provo City.
2. Object to the cessation of diversion of secondary rights when system storage rights have been depleted to the extent that such cessation interferes with decreed rights held by Provo.
3. Object to Utah Lake being considered or used as the control factor to the extent that such use would interfere with prior in time upstream rights held by Provo City.
4. Object to primary or system storage on Utah Lake having a call on any water stored upstream by Provo City.

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5. Object to any downstream use that is asserted in any way to defeat or interfere with Provo City decreed prior rights.
6. Object to any arbitrarily assigned priority date on the tributary streams to Utah Lake on which Provo City holds decreed rights.
7. Object to impounding of any water from the Provo River or its tributaries in Deer Creek Reservoir or Jordanelle Reservoir except in brief periods of high spring runoff when Provo has made no call on the water.

I am not an engineer and, therefore, have not attempted to verify the accuracy of the acre foot figures that you have used in your presentation. Provo City does not concede the accuracy of those figures.

As you probably know, Provo was formed under the Constitution for the State of Deseret. The Provo area began to be settled in 1849. During the process of that settlement, ditches, water courses and water uses were established, and Provo City's water rights were formally recognized with the formation of the State of Deseret. Utah was made a territory of the United States pursuant to the Organic Act of 1850. Land and appurtenances constituting Provo City were confirmed and there was no derogation of the rights previously established. Utah was admitted to the Union in 1896 and shortly thereafter, the first Morse Decree (Civil No. 718) was litigated in 1902. There was a subsequent Chidester Decree in 1907 (Civil No. 957) and then the comprehensive adjudication of water rights on the river was rendered by Judge Morse in 1921 (Civil No. 288). Judge Morse had commenced taking testimony in 1916. Provo City, along with all other interested water rights holders, filed their claims and briefs. The Judge reached an interim decision which was circulated to all parties. The matter was then reargued and his final decision rendered in 1921. This was a general adjudication of the Provo River Water Rights.

To arbitrarily assign a priority date overtaking any action which would take away from the decreed rights of Provo City would be inappropriate. As I am sure you are aware, a City not only has the right but the duty to

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appropriate water for immediate needs and for the future growth and expansion of the City (City and County of Denver v. Sheriff, 96 P.2d 836, 841). That same case, as well as others, hold that appropriations of water based on absolute decrees take on the attributes of property rights.

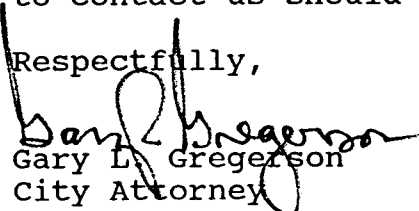
Water rights acquired under a judicial adjudication decree can only be changed by another adjudication decree (Little Cottonwood Water Company v. Kimball, 289 P. 116, 124, Utah 1930). Between decrees, the State Engineer must respect the adjudication until it is modified, reversed, vacated or set aside (Eden Irrigation Company v. District Court, 211 P. 957, 960, Utah 1922; Little Cottonwood Water Company v. Kimball, 289 P. 116, 124, Utah 1930).

I point these things out only because of my concern that the distribution plan for water on Utah Lake has the potential to impact decreed rights in an adverse way without benefit of a judicial adjudication decree.

As previously mentioned above, Provo City wants to work with the other water users to try to achieve a fair balanced plan to the use and distribution of waters tributary on Utah Lake and distributed from Utah Lake. To the extent that objective can be accomplished without compromising Provo City water rights, we will certainly be willing to work with your office and other participants.

Thank you for your attention and please don't hesitate to contact us should there be any questions.

Respectfully,

  
Gary L. Gregerson  
City Attorney

GLG/bb

cc. Merril Bingham  
Mayor Joseph A. Jenkins  
Jackson Howard  
Chuck Henson, Chairman of the  
Metropolitan Water Board